unoccupied part from interfering with an easement of light and air. Under similar circumstances the English law would recognize an easement of light and air arising by implied grant. *Palmer* v. *Fletcher,* 1 Lev. 122; *Allen* v. *Taylor,* 16 Ch. D. 355. But this suit involved an interest in land, and so had to be decided according to the *lex loci rei sitae,* i. e., the law of China. *Charlesworth, Pilling & Co.* v. *Secretary of State for Foreign Affairs* (1901), A. C. 373. No mention could be found of any such easement in any known Chinese law. The court was inclined to regard the theory of implied grant as something which had developed in English law to meet local needs, and it doubted whether any such theory existed in Chinese law in 1868. Even in English law the implied grant is a presumption which may be rebutted by showing extraordinary circumstances. The court thought that diversity of nationality among dominant and servient owners might be regarded as an extraordinary circumstance in an extraterritorial country. The injunction was denied, leave being granted to appeal to the Privy Council. *Tam Wa et al.* v. *Atkinson & Dallas* (Nov., 1920), H. B. M. Supreme Court for China and Corea.

INTOXICATING LIQUORS—WHAT IS A BEVERAGE—QUESTION OF FACT.—The defendant was indicted for selling Jamaica ginger containing 88 per cent alcohol, under a statute providing that "any beverage which contains more than one per cent of alcohol * * * shall be deemed to be intoxicating liquor within the meaning of this chapter." *Held,* the mere presence of a high percentage of alcohol did not make the preparation an intoxicating liquor under the statute, without a further finding by the jury that it could be and ordinarily was used as a beverage. *Commonwealth* v. *Sookey* (Mass., 1920), 128 N. E. 788.

Whether a liquid containing an alcoholic content capable of producing intoxication, but which is not ostensibly sold as a beverage, is within a prohibitory statute depends largely, of course, upon the terms of the particular statute. Thus, where a statute makes it unlawful to sell "any intoxicating decoction, mixture, compound, or bitters whatever, in any quantity or for any use or purpose," medicines, toilet preparations, etc., are included, although sold in good faith and not ordinarily used as beverages. *Compton* v. *State,* 95 Ala. 25. But in prosecutions for violations of other statutes expressly including such liquids, where the prohibition is simply against the sale of the same as beverages, the question of intent is controlling. *Walker* v. *Daily,* 101 Ill. App. 575; *State* v. *Hastings,* 2 Boyce (Del.) 482; *Bertrand* v. *State,* 73 Miss. 51. See also *Schemmer* v. *State* (Neb., 1920), 180 N. W. 581. Under statutes like that involved in the principal case, employing merely general descriptive terms such as "alcoholic liquor," "intoxicating liquor," or "intoxicating beverage," in addition to the question of the actual alcoholic content of the liquid, the additional question arises as to whether it is a beverage or liquor within the meaning of the statute. One court has said that a fluid is within the statute only when it is a liquor intended for use as a beverage, and capable of being so used, which contains alcohol in such a proportion

that it will produce intoxication when taken in such quantities as may practically be drunk. *Sandoloski* v. *State,* 65 Tex. Cr. R. 33. Generally, however, it is immaterial whether the decoction was intended for use as a beverage, provided it is capable of use as such, and is sold in evasion of the prohibitory legislation. *State* v. *Kezer,* 74 Vt. 50. But the presumption is that medicinal, toilet and culinary preparations, recognized as such by standard authority (such as the United States Dispensary), and not reasonably capable of use as intoxicating beverages, are not ordinarily to be regarded as within the meaning of the statute. *Mason* v. *State,* 1 Ga. App. 534. Still, the presumption may be rebutted and such products be found to be within the statute. *State* v. *Intoxicating Liquors and Vessels,* 118 Me. 198. Except in clear cases where the principle of judicial notice may be invoked, *Mundy* v. *State,* 9 Ga. App. 835, the question whether a given liquid is or is not a beverage is for the jury. *State* v. *Miller,* 92 Kan. 994, L. R. A. 1917 F, 238, and cases there collected.

JUDGMENTS—ABSENCE OF COUNSEL AS UNAVOIDABLE CASUALTY EXCUSING DEFAULT.—Counsel was engaged and put in possession of all the facts and records necessary for the defense of an expected suit. Because of illness in his family, such counsel was excused from attendance at the regular term of chancery court and informed there would be no special term by the chancellor. The expected suit was commenced in his absence. The party, relying upon his counsel, did nothing more than leave a copy of the summons served upon him at the office of his counsel. In the absence of any appearance judgment by default was taken. An action was brought to set aside the judgment on the grounds of "unavoidable casualty or misfortune preventing the party from prosecuting or defending," as provided by statute. *Held* (McCullough, J., dissenting): It was through the acts of the court that the party did not defend, and this was unavoidable casualty. Judgment vacated. *Berringer* v. *Stevens* (Ark., 1920), 225 S. W. 14.

Under a like statute, the absence of counsel because of his own negligence was *held* not to be "unavoidable casualty" as would justify setting aside of a judgment taken by default. *Wagner* v. *Lucas* (Okla., 1920), 193 Pac. 421.

Statutes providing for vacating of judgments by default because of unavoidable casualty or misfortune or excusable neglect are common. Pure negligence or lack of diligence is not unavoidable casualty within the meaning of the statute. *Sparks* v. *Ober & Sons Co.,* 138 Ga. 316; *Gooden* v. *Lewis,* 101 Kan. 482. Vacation of the judgment has been refused where: answer not made because of forgetfulness, *Jones* v. *Bibb Brick Co.,* 120 Ga. 321; attorney was not obtained because of lack of diligence, *Forest* v. *Appelget,* 55 Okla. 515; train missed and appeal forgotten, *Nye* v. *Sochor,* 92 Wis. 40. Unavoidable casualty is rather some event which human foresight, prudence or sagacity could not prevent. Courts have held as grounds for vacating judgments such acts as: sickness, *Liggett* v. *Worall,* 98 Ia. 529; miscarriage of the mails, *Chicago, R. I. & Pac. Co.* v. *Eastham,* 26 Okla. 605; rail-